IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4045 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SAVLI TALUKA CO.OP. PURCHASE AND SALES UNION LTD.

Versus

GUJ.STATE CO.OP.MARKETING FEDERATION LTD.

Appearance:

1. Special Civil Application No. 4045 of 2004

MR PUSHPADATTA VYAS for Petitioner No. 1

MRS RANJAN B PATEL for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 28/10/2004

ORAL JUDGEMENT

#. In this petition filed under Article 226 of the Constitution of India, the petitioner has challenged the

legality and validity of the order passed by the Gujarat State Cooperative Tribunal ("the Tribunal" for short) dated 24.11.2003 in Appeal No.56 of 2002 in not condoning the delay in preferring the appeal challenging the judgment and award passed by the Board of Nominees, Vadodara dated 3.12.2000.

#. It is the case of the petitioner that ex parte judgment and award came to be passed by the learned Board of Nominees, Vadodara on 3.12.2000 and it came to the knowledge of the petitioner for the first time with regard to passing of ex parte judgement and award by the learned Board of Nominees on 2.11.2001 and, immediately, thereafter the petitioner has applied for certified copy of the judgment and award and on receipt of the same, the appeal came to be filed. The application for condonation of delay was submitted by the petitioner, in which, it is the case of the petitioner that the petitioner came to know about passing of the judgment and award only on 2.11.2001, and, therefore, there is a delay in preferring the appeal. A detailed reply was submitted on behalf of the respondent Federation opposing the application for condonation of delay in which documentary evidences were also produced, such as letter dated 9.1.2001 written by the petitioner and also the communication dated 24.9.2001 by the petitioner to the respondent Federation.

#. From bare reading of the aforesaid communications, more particularly, communication dated 24.9.2001 by the petitioner to the respondent Federation, it is crystal clear that, in fact, even as on 24.9.2001 the petitioner was aware of passing of the judgment and award passed by the Board of Nominees and even in the letter dated 24.9.2001 it is stated by the petitioner that even if the respondent Federation executes the judgment and award, then the respondent Federation is not in a position to get more than Rs.10,000/-. Even, considering other documentary evidences which are produced today as well as communication dated 9.1.2001 as well as communication dated 18.9.2001, it appears that the petitioner was trying to settle the matter with the respondent Federation and has shown its willingness to make the payment, and, therefore, it appears that it was not thought by the petitioner to challenge the judgment and award passed by the Board of Nominees. Be that as it may. From the communication dated 18.9.2001 it is very much clear that the petitioner was aware of the judgment passed by the Board of Nominees on 3.12.2000. In spite of the aforesaid facts, false statement is made in the delay condonation application to the effect that it came to the knowledge of the petitioner for the first time on

2.11.2001 only. When the petitioner has come for discretionary relief, then the petitioner is supposed to give correct facts and should not have made incorrect statement. Considering the aforesaid documentary evidence and having come to the conclusion that the petitioner was already aware of the judgment passed by the Board of Nominees earlier and the story of the petitioner having come to know with regard to passing of the award on 2.11.2001 found to be false and incorrect and considering the fact that all throughout the petitioner society has admitted to make the payment, if the delay is not condoned, it cannot be said that any illegality is committed by the Tribunal. The Court is not to favour those persons who are making incorrect statement.

#. Mr.Vyas, learned advocate appearing for the petitioner, has tried to argue that considering Rule 41 of the Gujarat Cooperative Societies Rules, 1965, limitation starts from the communication by the nominee himself and therefore, there is a breach of Rule 41 and on that ground also, the order passed by the Tribunal in rejecting the delay condonation application is bad in law. Firstly, the question, whether the judgment and award was communicated by the Board of Nominees or not is a question of fact and the said question was not raised by the petitioner before the Tribunal. If it would have been raised, certainly, the petitioner would have come out with the case and after going through the record from the Board of Nominees that whether it was communicated or not. Even, in the order passed by the Tribunal, there is no reference to such argument being canvassed by the petitioner. It is not the case of the petitioner in the present special civil application that the said argument was canvassed and the Tribunal has not dealt with it. In absence of any pleadings in the petition and non-mentioning of the aforesaid contention in the order passed by the Tribunal, it is to be presumed that such contention was not raised by the petitioner. Therefore, it is not open for the petitioner to make the aforesaid grievance with regard to noncompliance of Rule 41. Learned advocate appearing for the petitioner has relied upon the judgments reported in 2002(3) GLR 2733 and 2002(2) GCD 1716 in support of his contention with regard to noncompliance of Rule 41. However, considering the fact that the aforesaid question was not raised by the petitioner before the Tribunal and, as, it is the question of fact, the same is not helpful to the petitioner in the facts and circumstances of the case. Learned counsel for the petitioner has also relied upon the judgment of the Apex Court reported in AIR 1998 SC

3222 in support of his submission that the delay is required to be condoned. However, the petitioner is not in a position to show that even if there is a case of making a false statement, then also delay is required to be condoned. Considering the fact that, in the present case, it is found that the petitioner has made false statement with regard to knowledge of the judgment and award and considering the fact that the Tribunal has rejected the application for condonation of delay, and, therefore, the said judgment is also not helpful to the petitioner in the facts and circumstances of the present case.

#. For the reasons stated above, this petition is required to be dismissed and is dismissed accordingly. Rule is discharged with no order as to costs. Interim relief granted earlier stands vacated forthwith.

(M.R.Shah,J)

(pathan)